

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division**

ROSARIO FIORANI,

Plaintiff,

v.

CIVIL ACTION NO. 4:08cv109

1ST ADVANTAGE FEDERAL CREDIT UNION,

MS. ELIZABETH GAVIN,

**MELANIE DOE
(no last name given),**

REPO TRANS NET TOWING,

AND

**KATHY DOE
(no last name given),**

Defendants.

**DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULE 41(b), OR
IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO 12(b)(6)**

COME NOW the Defendants, 1st Advantage Federal Credit Union and Elizabeth Gavin, by counsel, and move this Honorable Court to dismiss, pursuant to Rule 41(B) of the Federal Rules of Civil Procedure, those claims set forth in the Plaintiff's Complaint, as amended, and those claims set forth in Plaintiff's Motion for Emergency Relief due to Plaintiff's failure to abide by a prior court order issued from the United States District Court for the Eastern District of Virginia, Alexandria Division. In the alternative, the Defendants move this Court to dismiss, pursuant to Rule 12(b)(6) for those same reasons. For the reasons stated more fully in the

attached memorandum, the Complaint, as amended, was filed in violation of a prior court order requiring the Plaintiff to request leave of court prior to filing any further actions in a United States District Court and appending certain pleadings and rulings to such request. The Defendant also requests any further relief that the Court deems just.

Respectfully submitted,

1ST ADVANTAGE CREDIT UNION

AND

ELIZABETH GAVIN

/s/ _____
Matthew D. Meadows, Esq., (VSB #47172)
Joseph F. Verser, Esq. (VSB #73494)
JONES, BLECHMAN, WOLTZ & KELLY, P. C.
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, and I will mail the document by U.S. First Class Mail to the following non-filing user:

Pro Se Plaintiff

Rosario Fiorani
7115 Latour Court
P.O. Box 276
Lightfoot, VA 23090

/s/ _____
Matthew D. Meadows, Esq., (VSB #47172)
Joseph F. Verser, Esq. (VSB #73494)
JONES, BLECHMAN, WOLTZ & KELLY, P.C.
*Counsel for Defendants 1st Advantage Federal
Credit Union and Elizabeth Gavin*
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- 1) The *pro se* party is entitled to file a response opposing the motion and that any such response must be filed within twenty (20) days of the date on which the dispositive or partially dispositive motion is filed; and
- (2) The Court could dismiss the action on the basis of the moving party's papers if the *pro se* party does not file a response; and
- (3) The *pro se* party must identify all facts stated by the moving party with which the *pro se* party disagrees and must set forth the *pro se* party's version of the facts by offering affidavits (written statements signed before a notary public and under oath) or by filing sworn statements (bearing a certificate that it is signed under penalty of perjury); and
- (4) The *pro se* party is also entitled to file a legal brief in opposition to the one filed by the moving party.